

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR  
AND  
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

CMA No.1145 of 2015  
and M.P.No.1 of 2015

The Managing Director,  
Tamilnadu State Transport Corporation Limited,  
Villupuram.

.... Appellant/Respondent

Vs....

1. Diana Angelina
2. Minor Miracline Mancy  
(2nd respondent rep. through her  
mother Diana Angelina
3. Mariamadlien
4. Joseph Raj

.... Respondents/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and Decree dated 26.09.2013 made in M.C.O.P.No.102 of 2013 on the file of the Motor Accident Claims Tribunal, (District Court), Thiruvavur.

For Appellant : Mr.P.Paramasiva Doss  
For Respondents : Mr.S.Udayakumar

J U D G M E N T

(The Judgement of the Court was delivered by R.SUDHAKAR,J.)

Being aggrieved by the quantum of compensation awarded to the respondents/claimants in M.C.O.P.No.102 of 2013 on the file of the Motor Accident Claims Tribunal, (District Court) at Thiruvavur, the Tamilnadu State Transport Corporation, Villupuram has preferred this appeal.

2. It is a case of fatal accident. On 08.12.2011, at about 4.00 hours, when the deceased Henry was changing the tyre of the bus bearing registration No.TN-45-N-2667, belonging to the Tamilnadu State Transport Corporation, near Chengalpet GST Road, Tiruvarur, the bus bearing registration No.TN-25-N-0126, belonging to the appellant / Transport Corporation, came in the same direction from Maduranthakam to Chennai, in a rash and negligent manner, hit the said stationed bus from behind and as a result, the said Henry was done to death instantaneously. In this regard, a criminal case in Cr.No.1062 of 2011 for offence under Sections 279, 337 and 304(a) IPC was registered on the file of Chengalpet Police Station against the driver of the bus bearing Regn.No.TN25 N 0126.

3. The claimants, viz., the wife, a minor daughter and the parents of the deceased, have filed the claim petition before the Court below, claiming a sum of Rs.50,00,000/= as compensation. According to the claimants, the deceased was working as a driver in the appellant/Transport Corporation and was earning a sum of Rs.12,393/- per month.

4. In support of the claim, the wife of the deceased was examined as P.W.1 and one Murugesan, conductor of the bus bearing registration No.TN-45-N-2667 was examined as P.W.2 ; one Michael was examined as P.W.3; Dr.Dhanapal was examined as P.W.4 ; one Tirumeni and Imayavaramban were examined as P.Ws.5 and 6 and Exs.P-1 to P-13 were marked, the details of which are as follows:-

|         |   |                                                                           |
|---------|---|---------------------------------------------------------------------------|
| Ex.P-1  | - | Copy of FIR dated 08.12.2011                                              |
| Ex.P-2  | - | Copy of the postmortem certificate dated 08.12.2011                       |
| Ex.P-3  | - | Copy of the MVI Report                                                    |
| Ex.P-4  | - | Death Certificate Copy of Henry                                           |
| Ex.P-5  | - | Copy of the Legal Heirship Certificate                                    |
| Ex.P-6  | - | Copy of the Driving License of the deceased Henry dated 02.10.1999        |
| Ex.P-7  | - | Copy of the Identity Card of the deceased Henry                           |
| Ex.P-8  | - | Pay Receipts of the deceased Henry                                        |
| Ex.P-9  | - | Copy of the Pay Slip of the deceased Henry for the month of November 2011 |
| Ex.P-10 | - | Newspaper report of the accident dated 09.12.2011                         |
| Ex.P-11 | - | Certificate of the Veterinary doctor dated 27.04.2013                     |

|         |   |                                                                        |
|---------|---|------------------------------------------------------------------------|
| Ex.P-12 | - | Copies of the Service Register and Salary Certificate dated 02.09.2013 |
| Ex.P-13 | - | Certificate issued by PTN Dog Farm                                     |

5. On the side of the Transport Corporation, one Mr.Amirthasagaran, was examined as RW-1 and no documentary evidence was marked.

6. The Tribunal based on the oral evidence of the P.W.1 & 2, the F.I.R. and also taking note of the corroborating evidence in the form of the evidence of P.W.2 [Conductor Murugesan], eye witness to the occurrence, which has been adduced to prove that the bus bearing registration No.TN-25-N-0126 was driven in a rash and negligent manner and also taking into account the documentary evidence and further there being no satisfactory evidence adduced on behalf of the appellant to refute the eye witness testimony as to the rash and negligent driving of the bus, came to the conclusion that the accident was caused due to the rash and negligent driving by the driver of the bus bearing Registration No.TN-25-N-0126 to the appellant Transport Corporation and, therefore, the liability was fixed on the appellant herein and consequently the appellant was directed to compensate the claimants. Accordingly, the Tribunal awarded compensation under the following heads :-

|                                                                                              |   |                 |
|----------------------------------------------------------------------------------------------|---|-----------------|
| Loss of Dependency                                                                           | - | Rs.32,40,000/-  |
| Loss of consortium to the wife, loss of love and affection to the minor daughter and parents | - | Rs. 1,00,000/-  |
| Loss of Estate                                                                               | - | Rs. 10,000/-    |
| Funeral expenses                                                                             | - | Rs. 7,000/-     |
| Total Compensation                                                                           | - | Rs. 33,57,000/- |

7. In all the Tribunal awarded a compensation of Rs.33,57,000/- with interest at the rate of 7.5% to be paid by the Transport Corporation from the date of claim petition till date of payment/deposit and with further direction that the 1<sup>st</sup> claimant/wife of the deceased is entitled to withdraw a sum of Rs.15,57,000/-, 2<sup>nd</sup> claimant/minor daughter is entitled to Rs.10,00,000/- and petitioners 3 and 4 are entitled to a sum of Rs.4 lakhs each. Further, claimants 1, 3 and 4 were permitted to withdraw 50% of their respective shares and the balance amount was directed to be deposited in a Nationalised Bank for three years. With regard to the share of the minor daughter/ 2<sup>nd</sup> claimant, the same was directed to be deposited in a

Nationalised Bank in Fixed Deposit and the 1<sup>st</sup> respondent/mother of the minor was permitted to withdraw the accrued interest. Aggrieved by the said award, the Transport Corporation is before this Court by filing this appeal.

8. The only point raised by the learned counsel appearing for the appellant-Transport Corporation is that the tribunal has erred in accepting the additional income of the deceased earned from breeding dogs and selling them through PTN Dog Farm and fixed the monthly income of the deceased at Rs.37,893/-. He further submitted that the income of the deceased ought to have been fixed only based on his salary certificate issued by the Transport Corporation and hence, prays for modification of the Award.

9. This Court has given its careful consideration to the above contentions advanced by either parties and also perused the materials placed on record. As rightly pointed out by the learned counsel for the appellant-Transport Corporation, the tribunal ought not to have considered the additional income earned by the deceased by breeding and selling Dogs, when the deceased was claiming himself to be a permanent employee in Transport Corporation. Though, the award under the head loss of dependency needs modification, it is to be seen that the deceased was aged only 31 years at the time of accident and as per the decision of Hon'ble Supreme Court in Sarla Verma and Others Vs. Delhi Transport Corporation, reported in 2009 ACJ 1298, 50% of the income has to be added towards future prospects. Further, consolidated sum of Rs.1,00,000/- awarded towards loss of consortium to the wife, loss of love and affection to the minor daughter and parents, is very meagre. Award of Rs.7,000/- under the head funeral expenses is also less in view of the decision of Hon'ble Supreme Court in Rajesh and others Vs. Rajbir Singh, reported in 2013 ACJ 1403 case. Accordingly, the award of the Tribunal is modified as hereunder :-

Loss of dependency:

Monthly income of the deceased : Rs.12,393/-  
Future prospects @ 50% : Rs. 6,197/-  
Total : Rs.18,590/-  
Deduction towards personal expenses ( $\frac{1}{4}$ ) : Rs. 4,647/-  
Contribution to the family : Rs.13,943/-  
Multiplier : 16  
Loss of Dependency : Rs.13,943 x 12 x 16  
= Rs.26,77,056/-

|                    |   |                |
|--------------------|---|----------------|
| Loss of Dependency | - | Rs.26,77,056/- |
| Loss of Consortium | - | Rs. 1,00,000/- |

|                                                          |   |                 |
|----------------------------------------------------------|---|-----------------|
| Loss of love and affection to minor daughter             | - | Rs. 1,00,000/-  |
| Loss of love and affection to parents (Rs.25,000/- each) | - | Rs. 50,000/-    |
| Loss of Estate                                           | - | Rs. 10,000/-    |
| Funeral expenses                                         | - | Rs. 10,000/-    |
| Total Compensation                                       | - | Rs.29,47,056 /- |

10. Accordingly, this Civil Miscellaneous Appeal is disposed of in the following manner:

[i] The award of the Tribunal is reduced to Rs.29,47,056/- from Rs.33,57,000/-.

[ii] The interest granted by the Tribunal at 7.5% per annum is confirmed.

[iii] By order dated 18.6.2015, this Court recorded the statement of the learned counsel appearing for the appellant that the appellant has deposited a sum of Rs.18.00 lakhs and granted an order of interim stay.

[iv] By order dated 07.12.2015 in MP No.2/2015, this Court permitted the major claimants to withdraw 50% of their respective shares from the deposited 50% of the award amount with proportionate interest. With regard to the share of the minor this Court directed to deposit the amount in any one of the Nationalised Bank and the mother of the minor child was permitted to withdraw the accrued interest.

[iv] Learned counsel appearing for the appellant/Transport Corporation seeks time to deposit the balance amount ordered by this Court. The appellant is granted eight weeks time to deposit the amount ordered by this Court less the amount already deposited.

[v] On such deposit being made, the major claimants are permitted to withdraw the award amount as ordered by this Court as above.

[vi] The share of the minor shall be deposited in the same bank in which the deposit has already been made initially for a period of three years and to be renewed periodically.

[vii] The mother of the minor child is permitted to withdraw the accrued interest once in three months.

[viii] There will be no order as to costs in this appeal.  
[ix] Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge,  
(Motor Accident Claims Tribunal)  
Tiruvarur.

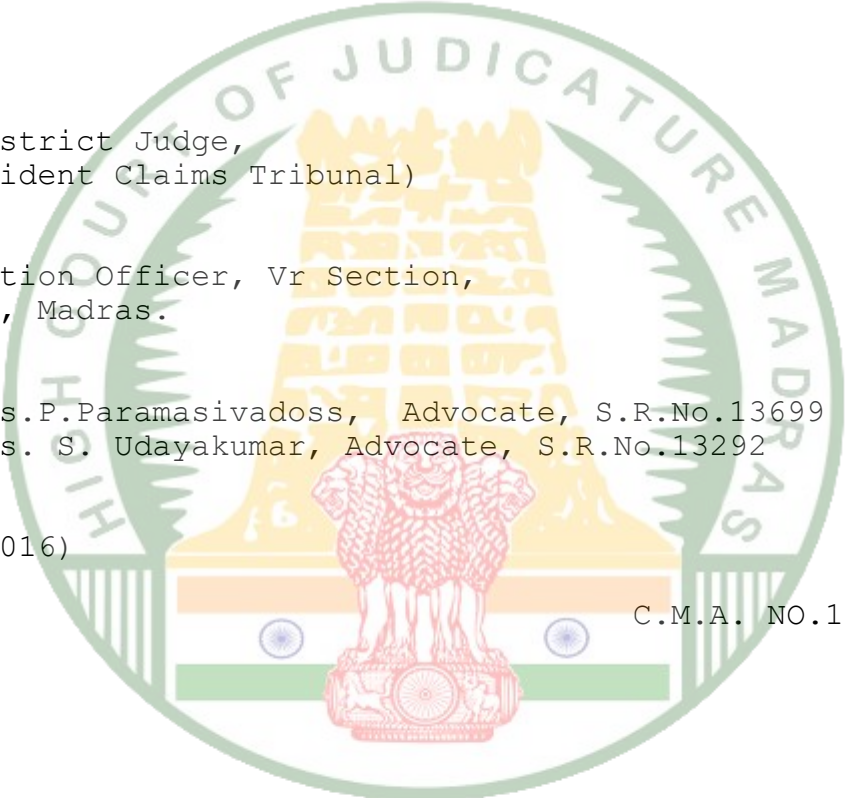
2. The Section Officer, Vr Section,  
High Court, Madras.

+1cc to M/s.P.Paramasivadoss, Advocate, S.R.No.13699

+1cc to M/s. S. Udayakumar, Advocate, S.R.No.13292

RSI (CO)  
EU(18/04/2016)

C.M.A. NO.1145 of 2015



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